

ORDINANCE NO. O-2003-42

BE IT ENACTED BY THE QUORUM COURT OF THE COUNTY OF BENTON, STATE OF ARKANSAS, AN ORDINANCE TO BE ENTITLED:

AN ORDINANCE ESTABLISHING REGULATIONS REGARDING THE PLACEMENT, CONSTRUCTION, AND MAINTENANCE OF ANTENNA ARRAYS AND COMMUNICATION TOWERS IN BENTON COUNTY, ARKANSAS

NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM COURT OF BENTON COUNTY, ARKANSAS:

ARTICLE 1. Purpose. The purpose of this ordinance is to promote the efficient and effective provision of communication services in compliance with the Telecommunications Act of 1996 while responding to the significant concerns of the citizens of Benton County. The intent of this ordinance is to protect the general safety and welfare of the citizens of Benton County by providing for rules governing the location, construction, repair and maintenance of antenna arrays and communication towers in the unincorporated areas of the County.

ARTICLE 2. Effect. This shall be a free-standing Ordinance, but to the extent not inconsistent herewith, the provisions of *Regulations, Standards, and Specifications for the Subdivision, Conveyance, Development and Improvement of Unincorporated Land in Benton County, Arkansas* as amended relating to administration, appeals, variances, and enforcement are incorporated by reference.

ARTICLE 3. Definitions.

- **"Applicant"** means the person or persons making an application to the County for approval of a tower or major modification, as defined herein, or, for continuing obligations hereunder, any legal successor to such person(s). Such person(s) need not be a tower or landowner.
- **"Antenna Array"** means one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include an omni directional antenna (rod), a directional antenna (panel) and /or a parabolic antenna (disc). The antenna array does not include the Support Structure, as defined herein.
- **"Tower"** means any structure that is designed and constructed primarily for the purpose of supporting one or more antenna arrays, including self-supporting lattice towers, common-carrier towers, cellular telephone tower, alternative tower structures, and the like. The fact that one or more antenna arrays is placed on

any structure which was not primarily intended for such purpose does not convert the structure into a tower.

- "Support Structure" means any existing structure onto which one or more antenna arrays are placed; they need not be towers.
- "Major Modification" means a change from personal use to non personal use or commercial use; any increase in height which would require a significant increase in lighting or noise level; or increase in height of more than 24' for towers at 250' or less in height or increases in height by more than 10% of tower's original height if over 250' any increase in width by more than 18", or for guyed towers in excess of 500' in height, 50% of the tower's original width, or 6" in diameter in the case of a monopole.
- "Personal Use" refers to a non-commercial use by a resident of the subject property. If any revenues are generated from the operation of the tower, it will not be for personal use as such term is used herein.
- "Residence" means a dwelling which is either currently inhabited by one or more persons legally entitled to being there, or suitable for such habitation. It specifically does not include abandoned or other structures that are not suitable for human habitation.

ARTICLE 4. General Applicability. The administrative review procedures of Article 6 shall apply to the placement and modification of antenna arrays and the construction of certain new towers as described in Article 6. The remainder of these regulations shall apply to the construction and major modification to towers, whether or not they are designed to provide cellular, personal communications service and/or specialized mobile radio service, except as provided herein. These regulations shall also apply to all outbuildings and facilities built in connection with any tower governed by these regulations. Any major modifications to a tower or facility must be approved in the same way that a new tower would have to be approved. If a tower is damaged or for other reasons is to be replaced, the repair or replacement is subject to these regulations only if the repair or replacement amounts to a major modification as defined herein. These regulations do not cover incorporated areas within Benton County, unless specifically approved and/or adopted by a municipality.

ARTICLE 5. Exclusions. The regulations adopted herein shall not apply to the following towers:

- (a) Towers for personal use which, including the height of all attached antenna arrays, do not extend more than 80 feet from the ground;

- (b) Placement of antenna arrays which cannot be used for emergency services or 9-1-1 calls on existing support structures so long as the placement does not increase the total height of the original support structure by more than 24 feet, and does not significantly increase the lighting or noise levels of the structure;
- (c) Temporary structures designed to be used for not more than 14 days in connection with a special event or for any reasonable period of time immediately following an emergency, including without limitation those towers that are identified as “C. O. W.s” or “Cellular on Wheels”.

ARTICLE 6. Projects subject only to Administrative Review. Certain projects falling within the scope of this ordinance are subject only to administrative review, and may be approved by the Staff of the Benton County Planning Office in the manner described in Article 7. Projects that are subject only to Administrative Review are:

- (a) Placement of antenna arrays which might be used for emergency services or 9-1-1- calls on existing support structures which do not increase the total height of the original support structure by more than 24 feet, and which will not significantly increase the lighting or noise levels of the structure. Outbuildings and facilities built in connection with such antenna arrays are subject to the same administrative review.
- (b) Construction of new towers or major modifications to existing towers so long as either of the following conditions are satisfied:
 - 1. After the construction or modification of the tower, there will be no residences which are within 400 feet plus the height of the tower from the perimeter of the base of the tower; or
 - 2. All persons owning said residences or the land upon which said residences are located have consented in a signed writing to the construction or modification of said tower.

ARTICLE 7. Procedures for Administrative Review of an Antenna Array. A project involving placement of an antenna array on an existing support structure, which is subject to Administrative review pursuant to the terms of this ordinance, shall be submitted to the Staff of the Benton County Planning Office, and shall contain the information required in the an application form developed by the Staff of the Planning Office. If the Application is complete and complies with the terms of this ordinance, the staff shall approve the application without the necessity for review by the full Planning Board. Administrative review shall not be given if any variance from these regulations is requested. The staff shall use best efforts to provide a response to any application within five (5) working days and a failure to respond

within fifteen (15) working days after receipt of a completed application shall be deemed to be an approval of such application.

ARTICLE 8. Procedures for Administrative Review of a Tower. A project involving construction of or major modification to a tower, which is subject to Administrative review pursuant to the terms of this ordinance, shall be submitted to the Staff of the Benton County Planning Office, and shall contain the information required in the an application form developed by the Staff of the Planning Office. If the Application is complete and complies with the terms of this ordinance, the staff shall approve the application without the necessity for review by the full Planning Board. Administrative review shall not be given if any variance from these regulations is requested. If, for any reason, the staff determines that Administrative Approval is not appropriate, the Applicant shall be entitled to amend the application to come within the scope of Article 9 of this ordinance and to have the amended application considered by the Planning Board. The staff shall use best efforts to provide a response to any application within five (5) working days, and a failure to respond within fifteen (15) working days after receipt of a completed application shall be deemed to be an approval of such application.

ARTICLE 9. Procedures for Regular Review. A project which is subject to regular review pursuant to the terms of this ordinance shall be submitted to the Staff of the Benton County Planning Office, and shall contain the information required in an application form developed by the Staff of the Planning Office. If the Application is complete and complies with the terms of this ordinance, the staff will submit the application to the full Planning Board for approval. The staff shall maintain a calendar of submittal dates for each Planning Board meeting. A completed application submitted prior to a given submittal date shall be presented for consideration at the applicable Planning Board meeting. In no event shall a submittal date be more than sixty (60) days prior to the scheduled Planning Board meeting. The Applicant is to be notified within sixty (60) days after initial consideration by the Planning Board of the decision of the Planning Board with regard to the application.

ARTICLE 10. Preference for Co-Location.

- a) All Applicants seeking permission to construct one or more towers in Benton County shall cooperate in co-location of antenna arrays on their towers where feasible. This requirement shall not be deemed to require Applicants to incur additional expense to construct their towers in order to facilitate co-location. All applicants seeking permission to construct a new tower primarily dedicated for cellular or PCS communication purposes shall, where feasible, design and construct said tower so as to accommodate co-location of at least one additional cellular or PCS provider in addition to Applicant.
- b) All Applicants seeking permission to construct a tower in order to serve one or more specific purposes must demonstrate in the application process that they had made a reasonable and good faith effort to co-locate their antenna arrays on existing towers or support structures.

This paragraph does not apply to Applicants who desire to construct a tower for the primary purpose of attracting other persons to co-locate on the tower.

- c) **In complying with the requirements herein, Applicants must include the information required in the appropriate Application Form, provided that:**
- 1. With regard to the required statement that the owners of all such towers have been contacted and asked about the possibility of co-location, an explanation of why such contact was not made will be satisfactory if it indicates that a particular tower was obviously unsatisfactory for technological or safety reasons, or if the owner could not be located after reasonable inquiry.**
 - 2. With regard to the required statement explaining why the available towers in the area are not suitable for co-location, by way of example and not limitation, existing towers would be unsuitable if co-location would cause interference problems, if there are other technological problems, if the tower is already filled to capacity, if the cost of co-location would exceed the cost of a new tower, if co-location would require a major modification (as such term is defined herein), or if co-location would not satisfy the reasonable foreseeable future needs of Applicant which would be served by construction of a new tower.**
 - 3. With regard to the supplemental information that may be required by the Staff of the Planning Office, Applicant may delete any and all references to confidential pricing information in any correspondence required to be submitted.**

ARTICLE 11. Set back from road. All towers shall be set back from the nearest edge of all roads, as recognized by the County 911 Administration Office with a specific name or number, by at least 50 feet plus the height of the tower. The edge of the road shall be defined as the edge of pavement or the edge of the unpaved surface at the time of the application. Due to topographic or other natural features the Planning Board may grant a variance for the additional 50' feet. Wherever possible, towers must follow the full setback requirements.

ARTICLE 12. Set back from residences. Towers subject to this ordinance will be located so that there will be no residences where the nearest part of the residence is within the height of the tower from the base plus 50 feet, unless all persons owning said residences or the land on which said residences are located consent in a signed writing to the construction of said tower.

ARTICLE 13. Mitigation of Visual Impact. In minimizing any aesthetic problems with a proposed Tower or Antenna Array, Applicants agree to take the following steps:

- a) Signage at the site is limited to non-illuminated warning and equipment identification signs.
- b) Unless specifically required by law or a regulatory authority or because there is no technologically feasible alternative, no tower shall be equipped with strobe lights that operate at night.

ARTICLE 14. Precautions against excessive noise. Equipment used in connection with a tower or antenna array shall not generate noise that can be heard beyond the site. This prohibition does not apply to air conditioning units no noisier than ordinary residential units or generators used in emergency situations where the regular power supply for a facility is temporarily interrupted; provided that any permanently installed generator shall be equipped with a functional residential muffler.

ARTICLE 15. Precautions against Trespassers. The base of every tower must be surrounded with a fence at least 6 feet in height and topped with either barbed wire or razor wire. The gate for such fence shall be kept locked except when authorized personnel are working on or around the tower. The fence must be posted with signs warning against trespass and providing a number to call in case of an emergency. With the exception of towers constructed in such a way that it is not reasonably practicable to do so, any ladder or other apparatus designed to aid in the climbing of a tower shall be constructed so that the bottom 12 feet of such ladder or apparatus is not readily accessible except when it is in use by construction, maintenance, repair or other authorized personnel.

ARTICLE 16. Maintenance of towers and facilities. By making an application hereunder, Applicant agrees to regularly maintain and keep in a reasonably safe and workmanlike manner all towers, antenna arrays, fences and outbuildings owned by Applicant which are located in the County. Applicant further agrees to conduct inspections of all such facilities not less frequently than every 12 months. Applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities. The Staff of the Planning Office may request in writing from the Applicant documentation regarding such inspections and maintenance activities at any such facilities. Such requests by Staff for documentation shall not be made more than three (3) times per year on any given tower. Applicant agrees to provide the documentation within 30 days after the mailing of any such request from the Staff. Said documentation shall be in the form of a sworn statement and shall include but not limited to the following items, unless the Staff specifically indicates that one or more of the following items need not be provided:

- a) The estimated date on which the tower was originally constructed and the date of all modifications thereto.
- b) Verification of safe and appropriate grounding and electrical connections as per the version of the National Electrical Code in effect at the last modification or addition to the electrical system.
- c) Structural design certification by the tower manufacturer regarding the facility's capability to withstand a combination of 1/2" accumulation of ice and 70 mile per hour winds.
- d) A statement that all antenna arrays on such tower have been attached and maintained in accordance with the specifications of the manufacturer, if any.
- e) For a guyed tower, a statement that all guy wires are being properly maintained so that structural integrity of the tower is not compromised.
- f) For any lattice tower, a statement that all welds and other joints are being properly maintained so that they do not show signs of wear which would make the tower unsafe.
- g) For lighted towers, verification of payment of the most recent applicable electric bill or other evidence that the facility remains functional and the safety signals are in working order.
- h) For unlit towers, a statement by the owner verifying the continued use or need for the structure.
- i) For structures which are painted for cosmetic reasons, proof that the tower has been painted within the last 5 years, or proof satisfactory to the Staff that the exterior does not currently need painting.

If any such information is not submitted within 30 days after the first notice, the Staff shall send a second written notice requesting the documentation within 15 days from the date of the second mailing. If the Staff does not receive the requested information by the end of normal business on the 15th day from the date on which the second notice was mailed, the Staff shall place the issue of whether the tower has been abandoned on the agenda at the next regularly scheduled County Planning Board meeting. At that meeting, the Planning Board shall determine whether the subject tower has been abandoned. If the owner/operator fails to respond or appear before the Board, or fails to present evidence regarding the above described items, the Planning Board shall make a determination of abandonment and forward said finding to the Quorum Court for action.

The Quorum Court, in its regular course of business, shall consider the determination of abandonment forwarded by the Planning Board, along with any subsequent submittals by the owner/operator of the tower. The owner/operator may request and be given a reasonable time, not to exceed three months, to implement a plan to restore the facility to safe operations. The Quorum Court may adopt such plan or any substitute plan deemed by the Court to be reasonable. If at any time, the Court finds that the tower in question has been abandoned, the Court shall instruct the County Judge to have the tower removed at the owner's expense within (90) days of said decision. Failure to timely remove these facilities shall constitute a nuisance under these regulations subjecting the owner and/or lessors to a fine not exceeding \$250.00. Each day of delinquency shall constitute a new violation. Upon removal the tower owners shall re-vegetate the telecommunication facility site to blend with existing surrounding vegetation at their expense. Any salvage value derived from the removed structures shall be applied to the costs of removal, if not paid by the owner.

ARTICLE 17. Regulatory Compliance. Applicant, by requesting approval of any Tower of Antenna Array in Benton County, certifies and agrees that no Towers or Antenna Arrays under the Applicant's control will emit electro-magnetic radiation (EMR) in excess of federal safety and health guidelines as adopted by any authorized federal regulatory agency.

ARTICLE 18. Opportunity for Public Response. Except as expressly provided herein, all landowners of record owning land within 300 feet of the base of the tower and all landowners of record owning property adjacent to the parcel of land on which any proposed tower or major modification subject to these regulations is to be placed, must be notified in writing and given a chance to voice opposition or support for a proposed tower or antenna array at a public meeting. For purposes of this provision, a landowner shall be considered to own property which is "adjacent" to the parcel of land on which the tower is to be constructed if it shares a common boundary with the parcel in question, or if it would share a common boundary except for the existence of a public road. In addition to the foregoing notice requirements, any time a variance from any of the requirements in these regulations is sought, all persons owning land within the height of the tower plus 50 feet from the base of the tower must be notified of the requested variance, and be given an opportunity to respond to the request.

ARTICLE 19. Fees. The Benton County Planning Board shall be authorized to charge an original license fee of \$200.00, and an annual review fee of \$100.00. Any such fees shall be payable through the Planning Office.

ARTICLE 20. Burden of Proof. Applicant must prove that any application under these regulations satisfies all of the applicable requirements of these regulations.

ARTICLE 21. Severability. If any part of these regulations are declared invalid by a court of competent jurisdiction such invalid portions shall be severed and the remaining portions of these regulations shall remain in full force and effect. Furthermore, all laws, rules, or regulations by the FCC or other federal entity shall supercede any of the provisions herein if a conflict exists.

ARTICLE 22. Enforcement. Violations of the provisions of this Ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of conditional uses, variances, or waivers) shall be enforced against the tower owner in accordance with *Regulations, Standards, and Specifications for the Subdivision, Conveyance, Development, and Improvement of Unincorporated Land in Benton County, Arkansas.*

APPROVED:

/s/ Gary D. Black
GARY D. BLACK, COUNTY JUDGE

ATTEST:

/s/ Mary L. Slinkard
MARY L SLINKARD, COUNTY CLERK
SPONSOR: JP J. SHERIDAN
DATE ADOPTED: September 25, 2003
Votes For: 11 Votes Against: ____
Abstain: __ Present: ____ Absent: 2